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Supreme Court, U.S.
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NO. 02-180

IN THE
Supreme Court of the United States

JOSE MELENDREZ, JR., ***Petitioner***

V.

ROBERTO LOZA, Task Force Agent, Zapata County, Texas in His Official Capacity; **TONY QUINTANILLA,** Formerly Investigator of Zapata County, Texas, now a U.S. Border Patrol Agent, in His Official Capacity; **ARNOLDO RAMOS,** Sergeant/Investigative Department of Public Safety in Del Rio, Texas, in His Official Capacity; **ARNOLDO FLORES,** District County Clerk, Zapata County, Texas, in His Official Capacity; **JUAN H. NAVARRO,** Sergeant at Zapata County Sheriff's Department, Texas in His Official Capacity; **ROLANDO GARZA,** District Attorney, Zapata County, Texas in His Official Capacity, ***Respondents.***

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENTS, LOZA, QUINTANILLA, FLORES, NAVARRO, AND GARZA'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Was it error to construe the Petitioner's 42 U.S.C.A. § 1983 claim as a claim for the violation of his Sixth Amendment right to a speedy trial where a liberal reading of the petition revealed no other possible cognizable theory?

2. Were the defendants entitled to official immunity where they were sued in their official capacities and the pleading made no allegation of a denial of a clear constitutional right or of an unlawful object in the alleged conspiracy?

3. Was it error for the trial court to liberally construe the Petitioner's pleadings in Petitioner's favor as suing the defendants in both their personal and official capacities, when the pleading only asserts a claim against them in their official capacities?

4. Can Petitioner bring a Fourteenth Amendment claim more than two years after the alleged cause of action accrued?

5. Was it error to dismiss the Sixth Amendment Challenge where the Petitioner failed to assert sufficient law or facts to support such a claim and where the Petitioner specifically disavows the claim?

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6. Whether Respondent Ramos is entitled to immunity as a state employee? Not a subject in this brief.

7. Was it error to dismiss as moot the Petitioner's Motion for Preliminary injunction where the warrant/capias had already been dismissed and where the relief requested is beyond the court's appropriate exercise of jurisdiction?

CORPORATE DISCLOSURE STATEMENT

Respondents, Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarro, and Tony Quintanilla do not dispute the list of parties provided by the Petitioner, but offer this Corporate Disclosure Statement for their insurer, St. Paul Fire & Marine Insurance Co. ("SPFM"). SPFM is a wholly owned subsidiary of The St. Paul Companies.

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I

RESPONDENT'S BRIEF IN OPPOSITION

Respondents, Roberto Leon, Tony Quintanilla, Arnoldo Flores, Juan H. Navarro, and Rolando Garza, file this Brief in Opposition praying that this Court deny the Petition for Writ of Certiorari complaining of the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case June 6, 2002.

REASONS FOR DENYING THE WRIT

Petitioner's case was dismissed for procedural reasons and because, on its face, it failed to state a proper claim or was barred by limitations. Petitioner has failed to demonstrate to this Court that the judgment was legally or factually wrong on the issues decided. Thus the Petition for Writ of Certiorari is misdirected and fails to sustain any appellate burden of proof.

A. The Courts Below Properly Construed Petitioner's Allegations.

Petitioner, in less than precise language, and Respondents in their official capacities under 42 U.S.C.

§ 1983 for (1) conspiracy to force him to act as a confidential informant in violation of his 14th Amendment rights; and (2) conspiracy to deprive him of due process rights in processing a warrant for a stale criminal charge. The complaint seeks $20 million in compensatory and punitive damages.

The trial court noted that exemplary damages would only be available against the defendants in a § 1983 action if they were sued in their personal capacity. Memorandum and Order of July 30, 2001, pp. 4-5 (citing *Kentucky v. Graham*, 473 U.S. 159, 165, 105 S.Ct. 3099, 3105 (1985)). The trial court also noted that the pleading was deficient in alleging that the government's policy or custom played a part in the alleged deprivation of rights. Memorandum, p. 4 (citing *Kentucky v. Graham, supra* and *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690-91, 98 S.Ct. 2018, 2036 (1978)).

Therefore, in keeping with the requirement to construe pro se complaints liberally, the trial court *expanded* the Petitioner's claims to include a claim for liability in the defendants' personal capacities. Memorandum, p. 2-5 (citing *Patterson v. MacDougall*, 506 F.2d 1 (5th Cir. 1975)). Because this action was *favorable* to the Petitioner, it does not support his request for reversal. Petitioner's Issue III is without merit.

Petitioner asserts that *Monell* does not apply and urges instead *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727 (1982). *Harlow* does not apply to this case because it involved a presidential aide who was entitled to qualified immunity also asserting absolute immunity derivative of the president's status. Respondents have asserted immunity, and are entitled to that immunity, as it applies to their own actual status under the law.

Oddly, Petitioner advances *Klopfer v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988 (1967). That case, while speaking in Petitioner's terms of denial of liberty, specifically evaluates that claimed right in terms of the Sixth Amendment right to a speedy trial. *See generally*, U.S. CONST. Amend. VI. As discussed herein, Petitioner specifically disavows any claim under the Sixth Amendment and has not stated a cognizable speedy trial claim.

Petitioner also cites *Slavin v. Curry*, 574 F.2d 1256 (5th Cir. 1978), *modified*, 583 F.2d 779 (5th Cir. 1978). While that case permits allegations against individuals for conspiracy to deprive one of his civil rights, the case is inapplicable where there has been no cognizable deprivation of civil rights and where the Petitioner specifically disavows any claim against the Respondents in their personal capacities.

Again, the trial court construed the complaint liberally in favor of Petitioner when reading it to assert a Sixth Amendment speedy trial right. The gist of Petitioner's complaint was that a warrant for his arrest was "stale" when issued and executed six years after the alleged criminal conduct. However, before the trial court determined this case, the warrant was dismissed. In the meantime, Petitioner complains that the timing of the warrant disturbed favorable treatment that the Petitioner had arranged in his punishment for other offenses.

While the Complaint asserts vague "due process" violations, the factual assertions, to the extent that they complain of the Respondents' conduct, are directed at the six-year delay between the conduct and the arrest. Thus, the only possible claim articulated in the Complaint was one for a speedy trial. The trial court construed this claim liberally in Petitioner's favor. Memorandum, p. 6. *See generally, Patterson, supra.*

Petitioner now disavows any intention to assert a Sixth Amendment claim, suggesting instead that he was making a complaint for a conspiracy to deprive him of "freedom of choice, liberty and due process rights . . . ." Petition, p. 21. Yet even at this stage of the case, he has failed to articulate what facts or law apply to such vague, general, and conclusory allegations. Thus this argument

does not support his request for reversal. Petitioner's Issues I and V are without merit.

B. The Sixth Amendment Claim Was Properly Dismissed.

Petitioner continues to disavow any right to recover under the Sixth Amendment. Petition, pp. 26-27. Thus his presentation of Issues I and V do not present any basis for reversal and are without merit. In an abundance of caution, however, Respondents set out the analysis by which the lower courts rendered a correct decision.

Petitioner's Sixth Amendment claim is his allegation that the Respondents violated his rights by issuing and serving a warrant against him six years after the conduct that triggered the warrant. The record shows that the warrant has been revoked. Memorandum, p. 7. His alleged injury is the adverse impact that warrant had on the punishment he was receiving on other criminal convictions.

Dismissal is appropriate under Fed. R. Civ. P. 12(b)(6) where it appears that no relief could be granted under any set of facts consistent with the allegations. *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). A claim under 42 U.S.C. § 1983 requires a showing of (1) deprivation of a U.S. Constitutional right (2) caused by a

state actor. *Fontana v. Barham*, 707 F.2d 221, 225 (5th Cir. 1983).

The "facts" set out in the Petition appear to be identical in all material respects to those alleged in the Complaint. Of course, it is only the allegations in the complaint that are considered in a motion to dismiss. *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998). These "facts," if proven, would not support a judgment against these Respondents. There is no allegation of the violation of a clear right or actionable conduct that would not be barred by limitations.

This Court has determined that an action under § 1983 is not available against officials who execute valid warrants. *Baker v. McCollan*, 443 U.S. 137, 99 S.Ct. 2689 (1979). The Petitioner's only claim that the warrant was invalid was his general complaint about its delay. He cites no authority for any argument that the warrant was objectively invalid because it was "stale."

Accordingly, the only way to determine if there was a problem with the warrant would be to balance four factors: (1) the length of the delay, (2) the reason for the delay, (3) the Petitioner's assertion of the right, and (4) the prejudice to the Petitioner. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192 (1974). Petitioner has not alleged facts

that support his claim under this test, and the Respondents cannot be charged with having to make this analysis. *See generally, Baker, supra.* Indeed, the trial court observed that Petitioner had not made a claim for a speedy trial of the charges contained in the warrant and probably benefitted from the delay. Memorandum, p. 9.

Petitioner's Issues I and V are without merit.

C. The Fourteenth Amendment Claim Was Properly Dismissed.

Petitioner's Fourteenth Amendment claim is his allegation that the Respondents conspired to force him to act as a confidential informant. *See generally*, U.S. CONST. Amend. XIV. According to the face of the Complaint, the alleged conspiracy ended in June, 1996. This action was filed on July 25, 2000, over four years later.

Petitioner does not complain of the invalidity of any of his current convictions. Neither does he assert that those convictions are related to his actions as an informant. Thus there is no cognizable claim of injury asserted in his Fourteenth Amendment complaint. Memorandum, p. 2.

Additionally, the statute of limitations is a proper basis for dismissal of an untimely claim. *Scott v. Johnson*,

227 F.3d 260, 262 (5th Cir. 2000). The Texas tort statute of limitations applies to this 42 U.S.C. § 1983 claim. *See generally*, *Wilson v. Garcia*, 471 U.S. 261, 266-67, 105 S.Ct. 1938, 1942 (1985); *Helton v. Clements*, 832 F.2d 332, 334 (5th Cir. 1987). Thus the claim is barred if filed more than two years after the cause of action accrued. Tex. Civ. Prac. & Rem. Code § 16.003. According to the face of the complaint, it was filed more than four years after the cause of action accrued. Therefore, it is barred by the statute of limitations.

Petitioner now argues that limitations does not bar this suit because of the doctrine of equitable tolling, citing *Rotella v. Pederson*, 144 F.3d 892, 897 (5th Cir. 1998). However, Petitioner did not plead equitable tolling. And his extensive fact rendition does not include any suggestion that the Respondents induced or tricked him into allowing the filing deadline to pass. Pursuit of an administrative remedy, without more, does not satisfy these requirements.

Petitioner's Issue IV is without merit.

D. Respondents Were Entitled to Immunity.

If the plaintiff's allegations fail to state a claim of violation of clearly established law, the defendants are entitled to official immunity. *Mitchell v. Forsyth*, 472 U.S.

511, 105 S.Ct. 2806, 2815 (1985). To make a claim against the defendants in their official capacities, the plaintiff must show that a governmental policy or custom played a part in the deprivation of rights. *Monell, supra.* As Petitioner failed to make this allegation, he has failed to assert a *prima facie* case against the Respondents in their official capacity. *See generally, Cronn v. Buffington*, 150 F.3d 538, 541 (5th Cir. 1998).

Furthermore, qualified immunity protects the Respondents from suit if their actions were objectively reasonable under clearly established law. *Cronn, supra.* Thus for Petitioner to prevail, he would have to show that the Respondents knew that they were violating Petitioner's clearly established right. As noted above, there was no such clearly established right with respect to the timing of the warrant. Therefore, qualified immunity protects the Respondents from this suit.

Petitioner's Issue II is without merit.

E. The Injunction Request Was Moot.

Melendrez sought an injunction ordering the Respondents to dismiss the warrant. Yet the motion requesting that relief indicated on its face that the warrant

had already been dismissed for almost a year. Memorandum, p. 12. Thus, the request was moot.

Petitioner does not dispute that the warrant was already dismissed in 2002. Instead, he asserts that the warrant was still active in 2000. Even if true, that fact does not change the analysis that, when the matter was presented to the trial court, it was already moot.

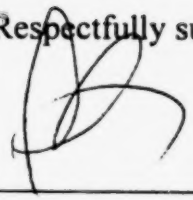
Furthermore, the request for injunctive relief is beyond the court's appropriate exercise of jurisdiction. *See Younger v. Harris*, 401 U.S. 37, 41, 91 S.Ct. 746, 749 (1971). Petitioner did not address this basis for the courts' decision. Thus, any complaint about this reasoning for the lower courts' decisions is waived.

Thus Petitioner's Issue VII is without merit.

PRAYER

For the reasons stated, certiorari should be denied and Respondents, Roberto Loza, Rolando Garza, Arnoldo Flores, Juan H. Navarro, and Tony Quintanilla so request.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Respondent's, Loza, Garza, Flores, Navarro, and Quintanilla's, Brief in Opposition was served on all counsel of record by placing three copies of same in the United States Mail, first class, postage prepaid, on the date indicated below, addressed as follows:

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Dated: AUGUST 26TH, 2002.

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